IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 933 OF 1999

1. Smt. Maya Chandrakant Gadgil
2. Kum. Gayatri Chandrakant Gadgil
3. Kumar Sagar Chandrakant Gadgil ..Appellants

versus

1. Shamim Ahmad Najir Shaikh
2. The Oriental Insruance Co. Ltd.
3. Majit Abdulajij Shaikh ..Respondents

Mr. Sachin Manale i/b. Suresh S. Pakale for the Appellants.

Mr. A. J. Chougule for the Respondent No.1

Mr. S. G. Deshpande for the Respondent No.2.

CORAM : D. G. DESHPANDE,J.

DATE : 9TH FEBRUARY,2005

ORAL ORDER :

1. This appeal is filed by the original claimant against the Award of the Tribunal in MACT Claim Petition No.220 of 1992 vide Judgment or Award dated 26.3.1999.

2. Clam petition arises in the following circumstances.

3. Chandrakant Tukaram Gagdil was the husband of claimant No.1 who was knocked down by one Ambassador Car No. MTJ-186 belonging to the 1st opponent and driven by the original opponent No.3. At the relevant time Chandrakant was busy in repairing scooter in front of his garage, viz. Manish Auto Works situate at Tembe Road and while he was doing so, Ambassador car of the original opponent No.1 dashed him, as a result he received number of multiple injuries and he died. In this background the claimants filed claim petition for Rs.2,51,000/- but the Tribunal awarded Rs.25,000/- only and that too the claim was awarded only against the owner of the vehicle, but claim against Appellant No. 2 and 3 were dismissed. It is against this order, that the present appeal is filed. Nobody has appeared for the respondent - owner of the vehicle i.e. Ambassador Car.

4. Counsel for the respondent No. 2 - Insurance Company contended that so far as the insurance company was concerned, the trial court was fully justified in dismissing the claim against the insurance company. Because the accident in question had occurred on 3.6.1992 at 9.15 a.m. whereas the owner got the vehicle insured in the afternoon and the certificate of insurance with cover note states

the period as 3.6.1992 to 1.6.1993 with specific time of 2.40 p.m. This cover note is at Exhibit 56/1 and insurance certificate is Exhibit 55/2, and thirdly there is one office copy of the cover note which is at Exhibit 56/1. According to the evidence of the owner and documents submitted by him and office copy of the cover note supplied to him show the date as 2.6.1992 to 3.6.1992. According to the owner the vehicle was fully insured at the time of the accident.

5. However, according to the counsel for the Insurance company, the Tribunal rightly believed the document filed by the owner. Therefore, in short, according to him if vehicle was insured in the afternoon after the accident then the insurance company was rightly not held liable by the Tribunal. As against this, counsel for the appellants contended that the insurance company has been wrongly exonerated by the Tribunal. He contended that there was no reason to give preferential treatment to the evidence of the insurance company when the owner has produced document showing commencement of the period of policy as 2.6.1992 to 1.6.1993. In order to properly appreciate the evidence, it is proper to look into the evidence of the witnesses, directly.

6. Opponent No.1 - the owner of the vehicle examined himself as witness No.1 of the opponent. He has stated that his Ambassador car was insured with Oriental Insurance Company. One Waghmode was the agent and papers were completed and signed in RTO Office, Kolhapur on, 2.6.1992 at 2 p.m. He paid instalment of Rs.250/- towards the premium and at that time the policy was valid from 2.6.1992 to 1.6.1993. He produced the cover note at Exhibit 49. It bears the signature of the Officer of the Insurance Company, and, contended that the date shown in the cover note is 2.6.1992 to 1.6.1993, is correct. He states that his car met with an accident on 3.6.1992 but the policy shows incorrect date as 3.6.1992 to 2.6.1993. He also stated that he has made a Protest letter through R.P.A.D. on 29.6.1992 and the same was received by the insurance company and their acknowledgement was produced by him and that correspondence was collectively marked as Exhibit 50. He also filed complaint at Exhibit 51 along with registration receipt and acknowledgement. This witness - owner of the vehicle was cross examined by the insurance company and it has to be noted that there is no effective cross examination worthy of taking note. Certain suggestions were put to him and all of which were denied by him. There was no suggestion that the owner had tried to play fraud upon the insurance

company by getting his vehicle insured after the accident occurred. He was not confronted with any other documents by the insurance company and particularly their document showing commencement of policy from 3.6.1992.

7. As against this, the insurance company examined one Kumar Devendra Chudappa - Development Officer. He has stated that Waghmode who deal with the owner in insurance transaction was working as an agent on commission basis and he produced one cover note wherein the period is shown as 3.6.1992 to 2.6.1993 and the time of the policy according to this witness is 2.40 p.m. on 3.6.1992.

8. This is therefore a case where the insurance company is confronted with their own documents. It is clear that insurance company has no explanation for the documents given to the owner, as referred to above, that the policy was to take effect from 2.6.1992 to 1.6.1993. This witness of the insurance company nowhere stated that the owner has played a fraud upon the insurance company by suppressing the fact of accident. He has stated that Waghmode had a good reputation and brought good business to the company and there was no occasion to doubt his business. If that is so then there was no reason for the trial court to discard the evidence of the

owner of the vehicle that one day before the accident the vehicle was insured.

9. Counsel for the appellants in support of his contention relied upon the Judgment of Andhra Pradesh High Court reported in **2002 ACJ 1724 Oriental Insurance Co. Ltd. vs. A. Balraj and Another,** wherein the insurance company issued policy commencing from 30.6.1989 to 29.6.1990 though the premium was received on 3.7.1989 and the incident took place on 2.7.1989. In that background of the matter Andhra Pradesh High Court held that once insurance company issues policy even without receiving the premium, the company is bound to pay compensation to the third parties unless the policy is cancelled or rescinded by him, and it is also held that issuance of policy without receiving premium is a mistake of the insurance company and on that score the third parties cannot be penalised. Andhra Pradesh High Court has relied upon the judgment of the Supreme Court reported in 1998 ACJ 123. The second judgment relied upon by the appellant was of Allahabad High Court reported in **2003 ACJ 2105 National Insurance Co. Ltd. vs. Nitmala Tewari and others.** That judgment is about initial liability or the statutory liability of the Insurance Company with a right to the Insurance Company to recover amount from the owner. That

question, in my opinion, does not arise in this case. It is clear that the insurance company in this case ought to have been held liable by the Tribunal, and it has wrongly rejected the claim against the Insurance company.

10. So far as quantum of compensation is concerned, for no reason the trial court awarded only Rs.25,000/- and that too which the claimant has received under no fault liability. The Tribunal did not at all consider as to the amount to which the claimants would be entitled. That aspect of the matter is not at all considered. The claimant Mo.1 has stated that deceased Chandrakant was the owner of the Manish Auto Works, and he was the sole proprietor thereof. All the tools in the garage belonged to him. He was earning Rs.2,000/- per month and used to give Rs.1,500/- for household expenses. He was also having a licence from the Corporation to run the garage and he was doing it for four years. He was also earning his livelihood as mechanic from 1975. Therefore she claimed compensation of Rs.2,51,000/-. In the cross examination she stated that she was unable to tell the exact income of her husband. In the further cross examination she admitted that she had a document to support her contention that her husband was earning Rs.2,000/- per month. It might be that

the wife was unable to produce any documents about the income of the husband, but looking to the age of the husband, who was 34 years at the time of his death and that he was working as a mechanic since 1975, then income of Rs.2,000/- per month, cannot be considered as exaggerated figure. In any case, it can be held that he was giving Rs.1,200/- per month to the family because that will be the minimum earning expected from the husband, looking to his age, therefore multiplier of 14 will have to be applied.

11. The amount of compensation payable thus comes to Rs.12,00/- x 12x14 = Rs.2,01,600/- in addition they will also be entitled to Rs.25,000/- towards love and affection and interest etc. Therefore, this appeal is required to be allowed. In the result, I pass the following order:

ORDER

. Appeal is allowed. Impugned Order dated 26.3.1999 is modified. The appellants will be entitled to total compenation at Rs.2,26,600/- with interest at the rate of 9% per annum date of the application, till payment. Appellants are also entitled to costs all throughout.

9.2.2005 (D.G. DESHPANDE,J.)